

## PAUL, WEISS, RIFKIND, WHARTON &amp; GARRISON LLP

1285 AVENUE OF THE AMERICAS  
NEW YORK, NEW YORK 10019-6064

TELEPHONE (212) 373-3000

LLOYD K. GARRISON (1946-1991)  
RANDOLPH E. PAUL (1946-1956)  
SIMON H. RIFKIND (1950-1995)  
LOUIS S. WEISS (1927-1950)  
JOHN F. WHARTON (1927-1977)

UNIT 5201, FORTUNE FINANCIAL CENTER  
5 DONGSANHUAN ZHONGLU  
CHAOYANG DISTRICT, BEIJING 100020, CHINA  
TELEPHONE (86-10) 5828-6300

SUITES 3601 – 3606 & 3610  
36/F, GLOUCESTER TOWER  
THE LANDMARK  
15 QUEEN'S ROAD, CENTRAL  
HONG KONG  
TELEPHONE (852) 2846-0300

WRITER'S DIRECT DIAL NUMBER

(212) 373-3306

WRITER'S DIRECT FACSIMILE

(212) 492-0306

WRITER'S DIRECT E-MAIL ADDRESS

hfischman@paulweiss.com

ALDER CASTLE  
10 NOBLE STREET  
LONDON EC2V 7JU, UNITED KINGDOM  
TELEPHONE (44 20) 7367 1600

535 MISSION STREET, 24TH FLOOR  
SAN FRANCISCO, CA 94105  
TELEPHONE (415) 432-5100

FUKOKU SEIMEI BUILDING  
2-2 UCHISAIWAICHO 2-CHOME  
CHIYODA-KU, TOKYO 100-0011, JAPAN  
TELEPHONE (81-3) 3597-8101

TORONTO-DOMINION CENTRE  
77 KING STREET WEST, SUITE 3100  
P.O. BOX 226  
TORONTO, ONTARIO M5K 1J3  
TELEPHONE (416) 504-0520

2001 K STREET, NW  
WASHINGTON, DC 20006-1047  
TELEPHONE (202) 223-7300

500 DELAWARE AVENUE, SUITE 200  
POST OFFICE BOX 32  
WILMINGTON, DE 19899-0032  
TELEPHONE (302) 655-4410

MATTHEW W. ABBOTT  
EDWARD T. ACKERMAN  
JACOB A. ADLERSTEIN  
JUSTIN ANDERSON  
ALLAN J. ARFFA  
JONATHAN H. ASHTON  
ROBERT A. ATKINS  
SCOTT A. BARSHAY  
PAUL M. BASTA  
LYNN B. BAYARD  
JOSEPH J. BIAL  
BRUCE BIRENBOIM  
H. CHRISTOPHER BOEHNING  
BRIAN BOLIN  
ANGELO BONVINO  
ANDRE G. BOUCHARD\*  
PAUL D. BRACHMAN  
GERALD BRANT  
ROBERT A. BRITTON  
WALTER F. BROWN\*  
SUSANNA M. BUERDEL  
JESSICA S. CAREY  
JOHN P. CARLIN  
DAVID CARMONA  
GEOFFREY R. CHEPIGA  
ELLEN N. CHING  
WILLIAM A. CLAREMAN  
LEWIS R. CLAYTON  
YAHANNES CLEARY  
REBECCA S. COCCARO  
JAY COHEN  
KELLEY A. CORNISH  
CHRISTOPHER J. CUMMINGS  
TIHITINA DAGNEW  
THOMAS V. DE LA BASTIDE III  
MEREDITH R. DEARBORN\*  
ARIEL J. DECKELBAUM  
KAREN L. DUNN  
ALICE BELISLE EATON  
ANDREW J. EHRLICH  
GREGORY A. EZRING  
ROSS A. FIELDSTON  
ANDREW C. FINCH  
BRAD J. FINKELSTEIN  
BRIAN P. FINNEGAN  
ROBERTO FINZI  
PETER E. FISCH  
HARRIS FISCHMAN  
KATHERINE B. FORREST  
VICTORIA S. FORRESTER  
HARRIS B. FREIDUS  
MANUEL S. FREY  
KENNETH A. GALLO  
MICHAEL E. GERTZMAN  
ADDAM M. GIVERTZ  
SALVATORE GOGLIORMELLA  
NEIL GOLDMAN  
MATTHEW B. GOLDSTEIN  
ROBERTO J. GONZALEZ\*  
CHARLES H. GOOGE, JR.  
ANDREW G. GORDON  
BRIAN S. GRIEVE  
UDI GROFMAN  
MELINDA HAAG\*  
ALAN S. HALPERIN  
CLAUDIA HAMMERMAN  
IAN M. HAZLETT  
BRIAN S. HERMANN  
JOSHUA HILL JR.  
MICHELE HIRSHMAN  
JARETT R. HOFFMAN  
ROBERT HOLO  
CHRISTOPHER HOPKINS  
DAVID S. HUNTINGTON  
AMRAN HUSSEIN  
LORETTA A. IPPOLITO  
WILLIAM A. ISAACSON\*  
JAREN JANGHORBANI  
BRIAN M. JANSON  
LUKE JENNINGS  
JEH C. JOHNSON  
MATTHEW B. JORDAN  
CHRISTODOULOS KAOUTZANIS  
BRAD S. KARP  
PATRICK N. KARSNITZ  
JOHN C. KENNEDY  
ROBERT A. KILLIP  
BRIAN KIM  
KYLE J. KIMPLER  
JEFFREY L. KOCHIAN  
ALEXIA D. KORBERG  
DANIEL J. KRAMER  
ANDREW D. KRAUSE

BRIAN KRAUSE  
CAISH KUSHNER  
KAISA KUUSK  
DAVID K. LAKHDHIR  
GREGORY F. LAUFER  
BRIAN C. LAVIN  
XIAOYU GREG LIU  
RANDY LUSKEY\*  
LORETTA E. LYNCH  
JEFFREY D. MARELL  
MARCO V. MASOTTI  
DAVID W. MAYO  
ELIZABETH R. MCCOLM  
JEAN M. MCLOUGHLIN  
ALVARO MEMBRILLERA  
MARK F. MENDELSON  
CLAUDINE MEREDITH-GOUJON  
WILLIAM B. MICHAEL  
SEAN A. MITCHELL  
ERIN J. MORGAN  
JUDIE NG SHORTELL\*  
CATHERINE NYARADY  
JANE B. O'BRIEN  
BRAD R. OKUN  
SUNG PAK  
CRYSTAL L. PARKER  
LINDSAY B. PARKS  
ANDREW M. PARLEN  
DANIELLE C. PENHALL  
CHARLES J. PESANT  
ANASTASIA V. PETERSON  
JESSICA E. PHILLIPS\*  
AUSTIN S. POLLET\*  
VALERIE E. RADWANER  
JEFFREY J. RECHER  
LORIN L. REISNER  
JEANNIE S. RHEE\*  
ANDREW N. ROSENBERG  
JUSTIN ROSENBERG  
JACQUELINE P. RUBIN  
RAPHAEL M. RUSSO  
ELIZABETH M. SACKSTEDER  
JEFFREY B. SAMUELS  
PAUL L. SANDLER  
AARON J. SCHLAPHOFF  
KENNETH M. SCHNEIDER  
ROBERT B. SCHUMER  
JOHN M. SCOTT  
BRIAN SCRIVANI  
KYLE T. SEIFRID  
NANNON K. SHANMUGAM  
SUHAN SHIM  
CULLEN L. SINCLAIR  
MAURY SLEVIN  
KYLE SMITH  
AUDRA J. SOLOWAY  
SCOTT M. SONTAG  
JOSHUA H. SOVEN\*  
MEGAN SPELMAN  
ROBERT Y. SPERLING  
EYITAYO ST. MATTHEW-DANIEL  
SARAH STASNY  
AIDAN SYNNOTT  
ROBERT D. TANANBAUM  
BRETTE TANNENBAUM  
RICHARD C. TARLOWE  
DAVID TARR  
MONICA K. THURMOND  
DANIEL J. TOAL  
LAURA C. TURANO  
CONRAD VAN LOGGERENBERG  
KRISHNA VEERARAGHAVAN  
JEREMY M. VEIT  
LIZA M. VELAZQUEZ  
MICHAEL VOGEL  
RAMY J. WAHBEH  
JOHN WEBER  
LAWRENCE G. WEE  
THEODORE V. WELLS, JR.  
SAMUEL J. WELT  
LINDSEY L. WIERSMA  
STEVEN J. WILLIAMS  
LAWRENCE I. WITDORCHIC  
MARK B. WLAZLO  
ADAM WOLLSTEIN  
STACI YABLON  
BOSCO YIU  
KAYE N. YOSHINO  
TONG YU  
TRACEY A. ZACCONE  
TAURIE M. ZEITZER  
KENNETH S. ZIMAN  
T. ROBERT ZOCHOWSKI, JR.

\*NOT ADMITTED TO THE NEW YORK BAR

February 21, 2023

VIA ECF

Honorable Judge Brian M. Cogan  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201

Re: *Swanson v. Interface, Inc.*, No. 1:20-cv-05518-BMC-RER (E.D.N.Y.)

Dear Judge Cogan:

We represent Interface, Inc., Daniel T. Hendrix, Bruce A. Hausmann, and Patrick C. Lynch (together with Jay D. Gould, “Defendants”) in the above-referenced action. We are writing in response to the Court’s text-only order, entered earlier today, which provides: “Having received no opposition to [Plaintiff’s motion for class certification (Dkt. No. 67)] motion, the Court will consider the motion as unopposed.”

Plaintiff’s class certification motion is opposed. Defendants’ anticipated opposition depends in part upon outstanding discovery that Defendants have sought from Lead Plaintiff and its investment advisor. Defendants have not yet received that discovery

Hon. Brian M. Cogan

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due to a dispute about cost shifting. Defendants' motion to compel against Lead Plaintiff and its investment advisor is pending. *See* Dkt. Nos. 59, 62, 63, and 65. On January 10, 2023, the Court referred that motion to Magistrate Judge Reyes for disposition.

Pursuant to the Joint Stipulation and Order Modifying the Briefing Schedule for Plaintiff's Motion for Class Certification, so-ordered by the Court on November 30, 2022 (Dkt. No. 56), the deadline for Defendants to oppose Plaintiff's class certification motion is "the later of: (i) sixty (60) days after the filing of the Class Motion; (ii) if the Motion to Compel is granted in whole or in part, forty-five (45) days after Defendants' receipt of all of the compelled discovery; or (iii) thirty (30) days after an order denying the Motion to Compel in full." Plaintiff's motion for class certification was filed on January 12, 2023; the date 60 days later will be March 13, 2023. Given that the motion to compel remains pending, we anticipate that the operative deadline will be that provided by part (ii) or (iii) of the scheduling order.

Accordingly, we respectfully request that the Court not treat Plaintiff's class certification motion as unopposed.

Respectfully submitted,

/s/ Harris Fischman

cc: Counsel of record (via ECF)